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National Trust Company, as Trustee for
Alliance Bancorp Mortgage Backed Pass-
Through Certificate Series 2007-OA1

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re
STEVEN MARK ROSENBERG,
Debtor.

STEVEN MARK ROSENBERG,
Plaintiff,

vs.

ALLIANCE BANCORP, INC (Estate),
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,
OCWEN LOAN SERVICING, ONE
WEST BANK, DEUTSCHE BANK
NATIONAL TRUST COMPANY, AS
TRUSTEE FOR ALLIANCE
BANCORP MORTGAGE BACKED
PASS-THROUGH CERTIFICATE
SERIES 2007-OA1 AND DOES 1
THROUGH 25, INCLUSIVE,
Defendants.

Case No. 1:17-bk-11748-VK

Chapter 7

Adv No. 1:17-ap-01096-VK

**JOINDER OF DEFENDANT
DEUTSCHE BANK NATIONAL
TRUST COMPANY, AS TRUSTEE
FOR ALLIANCE BANCORP
MORTGAGE BACKED PASS-
THROUGH CERTIFICATE SERIES
2007-OA1 IN REPLY BRIEF IN
SUPPORT OF MOTION FOR
JUDGMENT ON THE PLEADINGS
BY DEFENDANTS OCWEN LOAN
SERVICING, LLC AND
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.**

Date: April 4, 2018
Time: 2:30 p.m.
Crtrm: 301

Defendant Deutsche Bank National Trust Company, as Trustee for Alliance Bancorp Mortgage Backed Pass-Through Certificate Series 2007-OA1 (“Deutsche Bank”) hereby joins in the reply brief filed by defendants Ocwen Loan Servicing, LLC (“Ocwen”) and Mortgage Electronic Registration Systems, Inc. (“MERS”) on March 28, 2018 in support of their Motion for Judgment on the Pleadings (the “Motion”), and each of the arguments and authorities found therein. (See, Dkt. No. 32.) Deutsche Bank also joined the Motion.¹ (Dkt. No. 26.) Deutsche Bank moves for judgment on the pleadings in its favor for all the reasons stated in the reply brief and in the Motion.² (Dkt. No. 26.)

Ocwen and MERS’s reply brief, as did the Motion, correctly sets forth the applicable law and arguments. The law cited and arguments made by Ocwen and MERS are fully applicable to Deutsche Bank and demonstrate that judgment should be entered on the pleadings in favor of Deutsche Bank as well, without further leave to amend given to plaintiff and debtor Steven Mark Rosenberg (“Rosenberg”). Accordingly, Deutsche Bank incorporates the reply brief filed by Ocwen and MERS in its entirety herein by reference.

By way of this adversary proceeding, Rosenberg seeks damages and declaratory relief in connection with the deed of trust, recorded on March 15, 2007 as instrument number 2007-0575007, (“March 2007 DOT”) and securing a \$390,000 promissory note on a \$390,000 loan made to Rosenberg’s father (the “Loan”).³ (Dkt. 1, Complaint, p. 9.) Deutsche Bank is the current beneficiary of the loan secured by the March 2007 DOT.

¹ Rosenberg has not opposed Deutsche Bank’s joinder in the Motion.

² Since this is not a core matter under 28 U.S.C. § 157, Deutsche Bank does not consent to the entry of final orders or judgments by the bankruptcy judge. (See, Fed. R. Bankr. P. 7012(b).)

³ There is no dispute by Rosenberg that the Loan was in fact funded. The Loan was used by Rosenberg’s father to pay off an existing mortgage in the amount of \$361,288.97, \$26,821.84 in credit card debt, \$385.93 in unpaid property taxes, and \$711.00 in fire insurance premiums.

Rosenberg's allegations against Deutsche Bank are identical to the allegations Rosenberg has asserted against Ocwen and MERS. As with his allegations against Ocwen and MERS, Rosenberg's allegations against Deutsche Bank arise from the March 2007 DOT and arise from the same conduct Rosenberg attributes to Ocwen and MERS.

LEGAL ARGUMENT

A. ALL OF ROSENBERG'S FRAUD BASED CLAIMS ARE ALL TIME BARRED AS A MATTER OF LAW.

As argued by Ocwen and MERS in their reply brief and in the Motion, and incorporated herein by reference, Rosenberg's fraud-based claims against Ocwen and MERS, *as well as Deutsche Bank*, including those based on forgery, cancellation and rescission are time barred as a matter of law. (Reply Brief, p. 2.)

As correctly argued by Ocwen and MERS in their reply brief, pursuant to the rule of discovery, a plaintiff's fraud based claims begin to accrue on the date plaintiff first knew or should have known of the alleged harm. (*Jolly v. Eli Lilly and Co.*, 44 Cal.3d 1103, 1100 (1988); See also, 6 Witkin, *Summary of California Law*, section 1280 (Supp. 2013).) Rosenberg admits in his opposition brief that he believed the March 2007 DOT was forged *before* he filed his Probate Petition on August 27, 2009, more than *eight (8) years* before filing this adversary proceeding. (Opposition, page 8, lines 12-22; page 10; lines 5-8.) By Rosenberg's own admissions, any and all applicable statute of limitations to each of his fraud-based claims expired *at least five years* before he filed this adversary proceeding.

Rosenberg argues that this adversary proceeding brought under various provisions of the bankruptcy code "can be considered a continuation" of the Probate Petition. This is simply not true and not consistent with the law. Moreover, to the extent Rosenberg is implying the application of "equitable tolling," courts have specifically rejected equitable tolling under these circumstances, where plaintiff filed and voluntarily dismissed a first lawsuit, and then filed a second lawsuit sometime

1 thereafter. (See, *Thomas v. Gilliland*, 95 Cal.App.4th 427, 430-436 (2002).) Rosenberg
2 filed his petition on August 27, 2009, by his own admission, voluntarily dismissed it
3 in 2015 and then refiled this adversary proceeding on November 27, 2017. (See,
4 Opposition, p. 8, lines 16-28; p. 9, lines 1-7.) This adversary proceeding is not a
5 continuation of the probate petition filed on August 7, 2009 by Rosenberg, nor is
6 Rosenberg entitled to equitable tolling under the circumstances. Accordingly, as
7 correctly argued by Ocwen and MERS, Rosenberg's fraud based claims against
8 Ocwen and MERS, *as well as Deutsche Bank*, are time barred as a matter of law.

9 **B. ALL OF ROSENBERG'S FRAUD BASED CLAIMS LACK THE**
10 **REQUIRED SPECIFICITY.**

11 As argued by Ocwen and MERS in their reply brief and in the Motion, and
12 incorporated herein by reference, Rosenberg's fraud-based claims against Ocwen and
13 MERS, *as well as Deutsche Bank*, including those based on forgery, cancellation and
14 rescission lack the required specificity. (Reply Brief, p. 2.)

15 Fraud based claims require that allegations be pleaded with specificity. (See,
16 FRCP Rule 9(b); *In re Actimmune Marketing Litigation*, 2009 WL 3740648, *6 and
17 *9.) To satisfy Rule 9(b), plaintiffs must explicitly aver "the who, what, when, where,
18 and how" of the alleged fraudulent conduct. (*Ibid.*; *Cooper v. Pickett*, 137 F.3d 616,
19 627 (9th Cir.1997); see also, *Lazar v. Superior Court*, 12 Cal.4th 631, 645 (1996).) In
20 a fraud claim against a corporation like Deutsche Bank, a plaintiff must allege the
21 names of the persons who made the misrepresentation, their authority to speak for the
22 corporation, to whom they spoke, what they said or wrote, and when it was said or
23 written. (*Id.* at 645.)

24 Indeed as a matter of law each element of the cause of action for fraud must be
25 alleged in the proper manner, *factually and specifically*. (*Quelimane co. v. Stewart*
26 *Title Guar. Co.*, 19 Cal.4th 26, 47-48 (1998); *Goldrich v. Natural Y Surgical*
27 *Specialities, Inc.*, 25 Cal.App.4th 772, 782-783 (1994).) Here, as correctly argued by
28 Ocwen and MERS, Rosenberg falls well short of meeting that requirement.

**C. ROSENBERG DOES NOT HAVE STANDING TO CHALLENGE
EITHER THE ASSIGNMENTS OR THE SECURITIZATION.**

As argued by Ocwen and MERS in their reply brief and in the Motion, and incorporated herein by reference, Rosenberg lacks the standing to challenge the assignments of the March 2007 DOT as against Ocwen, MERS or Deutsche Bank. (Reply Brief, p. 2-5.)

**D. ROSENBERG ARGUMENTS REGARDING ESTOPPEL, THE
DISCOVERY PROCESS AND THE NEED FOR A 341 HEARING ARE
COMPLETELY WITHOUT MERIT AND FRIVOLOUS.**

As argued by Ocwen and MERS in their reply brief, Rosenberg's arguments regarding estoppel, the discovery process and the requirement for a 341 hearing are ridiculous and absolutely without merit. (Reply Brief, p. 6-7.)

**E. AMENDMENT IS FUTILE IN THAT ROSENBERG CANNOT
CURE THE DEFECTS OF HIS COMPLAINT.**

As argued by Ocwen and MERS in their reply brief and in the Motion, and incorporated herein by reference, Rosenberg has not and cannot demonstrate how he can possibly amend the adversary proceeding complaint to assert a valid and timely claim against any of the defendants, including Deutsche Bank. (Reply Brief, p. 7.)

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1 **F. CONCLUSION.**

2 For the reasons stated above, and for all the reasons stated in Ocwen and
3 MERS' reply brief and motion for judgment on the pleadings, Deutsche Bank
4 respectfully requests that this Court grant Ocwen and MERS' motion for judgment on
5 the pleadings, and dismiss Rosenberg's complaint, and each of its asserted claims for
6 relief, with prejudice as to Ocwen, MERS, and Deutsche Bank.

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8 DATED: March 29, 2018

GARRETT & TULLY, P.C.

Robert Garrett

Tomas A. Ortiz

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10
11 /s/ Tomas A. Ortiz

12 TOMAS A. ORTIZ

13 Attorneys for Defendant Deutsche Bank National Trust
14 Company, as Trustee for Alliance Bancorp Mortgage
15 Backed Pass-Through Certificate Series 2007-OA1
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
225 S. Lake Avenue, Suite 1400 Pasadena, CA 91101

A true and correct copy of the foregoing document entitled (*specify*): **JOINDER OF DEFENDANT DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR ALLIANCE BANCORP MORTGAGE BACKED PASS-THROUGH CERTIFICATE SERIES 2007-OA1 IN REPLY BRIEF IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS BY DEFENDANTS OCWEN LOAN SERVICING, LLC AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) **3/29/18**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Amy L. Goldman (TR) marisol.jaramillo@lewisbribois.com; AGoldman@iq7technology.com;
ustpreion16.wh.ecf@usdoj.gov; Marvin Adviento, Lukasz I. Wozniak, Def. Alliance Bancorp, Inc, Deutsche Bank Natl. Trust Co. as Trustee for Alliance Bancorp Mortgage Backed Pass-Through Certificate Series 2007-OAO1, Mortgage Electronic Registration Systems; Ocwen LLC; madivento@wrightlegal.net; mjohnson@wrightlegal.net;
Lwozniak@wrightlegal.net

2. SERVED BY UNITED STATES MAIL:

On (date) **3/29/18**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Steven Mark Rosenberg
106-1/2 Judge John Aiso St., #225
Los Angeles, CA 90012

U.S. Trustee (SV)
915 Wilshire Blvd, Ste 1850
Los Angeles, CA 90017

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) **3/29/18**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

VIA FEDERAL EXPRESS

The Honorable Victoria S. Kaufman
United States Bankruptcy Court - Central District of California
21041 Burbank Blvd, Suite 354 / Courtroom 301
Woodland Hills, CA 91367

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

3/29/18
Date

Delorise Cameron
Printed Name

/s/ Delorise Cameron
Signature